

Scott J. Witlin  
(310) 284-3777  
scott.witlin@btlaw.com

www.btlaw.com

July 18, 2017

**VIA E-FILING**

Mori Rubin, Esq.  
Regional Director  
National Labor Relations Board, Region 31  
11500 W Olympic Blvd, Ste 600  
Los Angeles, CA 90064-1753  
mori.rubin@nrlrb.gov

Re: 31-CB-201581 (Radical Media, LLC)  
31-CB-201583 (Biscuit Filmworks, LLC)

Dear Ms. Rubin,

Kane Kessler, P.C. and Barnes & Thornburg, LLP represent the above-referenced companies (the "Employers") in the above-captioned charge. This letter shall serve as the Employers' statement of position in connection with these charges filed by the Employers against the International Alliance of Theatrical Stage Employees and its Local 871 (collectively "IATSE or "Union").

The allegations contained in the above-captioned charges relate to earlier charges filed by the Employers on February 3, 2017 against IATSE in the cases numbered 31-CB-192722 (Radical Media, LLC) and 31-CB-192754 (Biscuit Filmworks, LLC) and amended on April 28, 2017. (The earlier charges as amended are referred to herein as the "February 3 Charges.") The basis of those charges was the Employers' allegation that the Union failed and unreasonably delayed providing information in violation of its duty under Section 8(b)(3) of the Act.<sup>1</sup>

As stated in the Employers' March 14, 2017 Statement of Position in connection with the February 3 Charges, the central issue of the February 3 Charges was to seek facts underling grievances asserted by the IATSE's Local 871, asserted as being on behalf of the IATSE against the Employers (the "Grievances.")<sup>2</sup> In its Grievances, the IATSE claimed it is the exclusive

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<sup>1</sup> A copy of the February 3 Charges are attached, hereto, as **Exhibit 1**.

<sup>2</sup> A copy of the Grievances made against Biscuit Filmworks and Radical Media, are attached, hereto, as **Exhibit 2**.

bargaining representative of certain classes of employees who historically had been excluded from IATSE's bargaining unit under the parties' collective bargaining agreement. In support of and attached to each Grievance were witness statements of (b) employees who purportedly fell within the scope of the bargaining unit, and allegedly performed bargaining unit work. The statements contended that the work performed by the employees in the Commercial industry was the same as the work they performed in the motion picture and television industry. However, the witness statements contained largely identical and boiler-plate language, without any specific information necessary to assess the generalized assertions. In particular, the statements did not indicate which projects these individuals worked on that served as the bases for their comparisons of the work in the various industries.

Thus, in order to understand the theory underlying the Union's Grievance and to prepare for any eventual arbitration, the Employers' requested pertinent information related to the assertions underlying the IATSE's Grievance. The Employers submitted an information request related to the subject of the Grievance in February, 2016 (February Information Request)<sup>3</sup> and made a second information request on July 22, 2016. ("July Information Request.")<sup>4</sup>

On or around August 4, 2016, the IATSE responded purporting to answer the July Information Request. However, its response was a 16-page long letter that was mostly objections. ("Response.")<sup>5</sup> In the Response, the IATSE provided certain information but refused to provide significant portions of the information requested, on the grounds that such information was irrelevant, not in its possession, or simply too burdensome to supply. Ex. 5, pp. 1-5, 8-10. Moreover, its Response contained several objections interspersed with promises to provide certain information. For example, the IATSE asserted that it would provide certain information related to the witnesses at the subject of its grievances. Ex. 5, p. 10. Further, other information was conditioned upon the selection of arbitrators for various grievances. See, e.g., Ex. 5, pp. 2-4.

Having not received additional responses from the Union after having given it a reasonable time to fulfill its promises, the Employers, on February 3, 2017, filed unfair labor practice charges with the Board, alleging that the IATSE had refused to bargain in good faith by failing to provide information necessary for contract administration. Ex. 1. On April 28, 2017, the Employers amended the February 3 Charges, adding the express allegation that the Union had refused to bargain by unreasonably delaying the provision of information.

On May 4, 2017, during the investigation of the February 3 charges, and, nine months after its initial response to the July Information Request, IATSE provided a further response to the Employers ("Second Response").<sup>6</sup> In this letter, the Union stated that ***"IATSE reasserts all the objections set forth in Mr. Kahn's letter, and provides a further response as follows:"*** Ex.

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<sup>3</sup> The Employers' February Information Request is attached, hereto, as Exhibit 3.

<sup>4</sup> A copy of the Employers' July Information Request is attached, hereto, as Exhibit 4.

<sup>5</sup> A copy of the IATSE's August 4, 2016 Response is attached, hereto, as Exhibit 5.

<sup>6</sup> A copy of the Union's May 4, 2017 Further Response is attached, hereto, as Exhibit 6.

6, p. 1. (Emphasis added). While IATSE did provide some of the factual information sought related to the witnesses that were the subject of the grievances, IATSE also expressly continued in its refusal to provide certain additional information.

IATSE has continued to refuse to provide much of the requested information. On June 9, 2017, the Employers submitted a letter to IATSE's Counsel, Mr. White, renewing its February, 2016 and July, 2016 information requests ("Renewed Information Request").<sup>7</sup> In its letter, the Employers referenced and summarized all the requests that remained outstanding and/or incomplete and again summoned the Union to provide this information.

On June 26, 2017, the Union provided an additional response to the Employers. ("Third Response.")<sup>8</sup> The Union persisted in its refusal to provide the information requested. For example, with respect to certain information requested regarding the witnesses at the subject of the Union's Grievances, the IATSE stood upon its prior refusals, expressly stating that its "*previously asserted objections remain.*" Ex. 8, p. 1. (Emphasis added.)

Given the Union's ongoing refusal to provide information, the Employers filed the above-captioned charges on June 28, 2016, alleging that the Union has refused to bargain in good faith by failing and continuing to fail to provide information necessary for contract administration.

The Union's ongoing refusal to provide information and delay in providing information is on all fours with a prototypical violation that is continuing in nature. See, NLRB Case Handling Manual, Section 10052.2, citing, *Chesapeake and Potomac Telephone Co.*, 259 NLRB 225 (1981), enfd. 687 F.2d 633 (2d Cir. 1982). In *Chesapeake*, the Board found an employer's refusal to furnish relevant information prior to the 10(b) period did not insulate it from a finding of a violation based on the employer's subsequent refusal to furnish that same information when the request was made within 6 months of the filing of the charge. The Board established that this subsequent refusal to provide the information within 6 months of the filing of the charge constituted a "continuing violation." *Chesapeake*, supra at 230.

*Chesapeake* makes clear that it is the further refusal to provide information that triggers a continuing violation. *Chesapeake*, supra at 230 ("The violation of Section 8(a)(5) and (1) found herein is a continuing violation, because Respondent has *refused* to bargain; that is, it has *refused* to give the Union the documents necessary for the Union to [...] prepare for [arbitration].") (Emphasis added.)

Similarly, here, the IATSE's refusal to provide the information requested is a continuing violation. IATSE failed to provide much of the information requested in its First Response. It

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<sup>7</sup> A copy of the Renewed Information Request is attached, hereto, as **Exhibit 7**.

<sup>8</sup> A copy of the Third Response is attached, hereto, as **Exhibit 8**.

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again reincorporated its refusal to provide much of the information requested in its Second Response, and has continued to rely on its prior refusals to provide such information in its Third Response. Thus, the Union's ongoing failure to provide information necessary for contract administration constitutes a continuing violation of the Act.

As the new charges establish a continuing violation arising from the Employers' initial charges, the Employers respectfully reiterate its request that the Region consolidate the above-captioned charges with the February 3 charges for its consideration, pursuant to NLRB Rules and Regulations § 102.33(c) and the NLRB Case Handling Manual, Section 11716. The Respondents are "the same in each case, where multiple respondents are sufficiently related or where the fact situations are sufficiently related" with Case Nos. 31-CB-192722 and 31-CB-192754. Accordingly, the Employers request the Region to consider its Statements of Position in Case Nos. 31-CB-192722 and 31-CB-192754 in reviewing the above-captioned charges.

Very truly yours,



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Scott J. Witlin  
Barnes & Thornburg LLP

cc: Angelica Blanco, Board Agent, [angelica.blanco@nrlb.gov](mailto:angelica.blanco@nrlb.gov)  
Danielle Pierce, Supervisory Field Examiner, [danielle.pierce@nrlb.gov](mailto:danielle.pierce@nrlb.gov)  
Robert Sacks, Esq., [rsacks@kanekessler.com](mailto:rsacks@kanekessler.com)

THOMAS A. KANE (1928-1977)  
SIDNEY S. KESSLER (1936-1986)  
JOSEPH NURNBERG (1978-2003)

DARREN S. BERGER†  
PETER CAMPITIELLO  
ADAM M. COHEN  
STEVEN E. COHEN  
GARY E. CONSTABLE†  
JEFFREY H. DAICHMAN  
ARIS HAIGIAN  
MITCHELL D. HOLLANDER†  
S. REID KAHN\*\*  
ROBERT L. LAWRENCE  
RONALD L. NURNBERG  
GARY E. OSTROFF  
ARTHUR M. ROSENBERG†  
DAVID R. ROTHFELD  
JUDITH A. STOLL  
DANA M. SUSMAN†  
JEFFREY S. TULLMAN

ALSO ADMITTED  
FLA. BAR\*  
N.J. BAR†  
N.J. AND D.C. BAR\*\*

## KANE KESSLER, P.C.

1350 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-4896

(212) 541-6222  
FAX: (212) 245-3009  
WWW.KANEKESSLER.COM

WRITER'S DIRECT NUMBER

(212) 519-5184  
[rsacks@kanekeessler.com](mailto:rsacks@kanekeessler.com)

PETER R. HERMAN  
ROBERT KOLODNEY  
BARRY E. NEGRIN†  
ROBERT L. SACKS  
BRUCE M. SCHLOSS  
PAUL E. SZABO  
LOIS M. TRAUB  
COUNSEL

MICHAEL A. ZIMMERMAN  
OF COUNSEL

MATTHEW C. CARROLL†  
VICTOR I. COHEN  
LINDA M. DOUGHERTY†  
ARI M. GAMSS  
BRENDAN P. HARNEY  
MICHAEL C. LYDAKIS  
BRENDAN P. McFEELY  
MITUL D. PATEL  
JACLYN K. RUOCCO†  
JONATHAN M. SABIN†  
GERARD SCHIANO-STRAIN  
MARC S. SILVERSTEIN  
ALEXANDER SORIC  
JOSEPH J. VENTIMIGLIA  
JONATHAN A. ZALKIN

February 18, 2016

VIA FIRST CLASS MAIL AND

VIA PDF: [jvarga@iatse.net](mailto:jvarga@iatse.net)

James G. Varga, Esq.

West Coast Counsel

I.A.T.S.E.

10045 Riverside Dr., 2<sup>nd</sup> Floor

Toluca Lake, CA 91602

VIA FIRST CLASS MAIL AND

VIA PDF: [akahn@iatse.net](mailto:akahn@iatse.net)

Andrew Kahn, Esq.

West Coast Counsel

I.A.T.S.E.

10045 Riverside Drive, 2<sup>nd</sup> Floor

Toluca Lake, CA 91602

Re: Producer Request For Information ("RFI")

Dear Jim:

Thank you for agreeing to accept this Producer Request For Information on behalf of the IATSE (herein "Union"). This RFI is submitted separately on behalf of each of the 17 AICP production company signatories (see attached list) to the 2013 CPA that received the IATSE RFI dated September 14, 2015.

It is requested that the IATSE for itself and on behalf of its constituent locals listed in the CPA provided the following information and documents:

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1. For the period from October 1, 2013 through the present please identify (A) by name and producer ( with such producer's address) (B) all productions produced under any IATSE agreement with such producer covering feature motion pictures (C) on which productions the IATSE maintains that Production Office Coordinators were used in the same manner as on a commercial production and (D) such commercial production is identifiable by the IATSE by name of production company, date and name of commercial ( or other identification information).
2. For each production covered by Question 1 (A) through (D) above please list the duties performed by the commercial office coordination on the feature motion picture under (B) and the duties performed by the production office coordinator on the commercial under clause (C) where it is maintained commercial office coordinators were used in the same manner as the said feature motion picture.
3. Please provide the IATSE crew sheet or crew list for each production covered by Question 1 above.
4. Please provide us with a list of job duties that the IATSE contends establishes the manner in which Production Office Coordinators, Production Accountants Art Department Coordinators, Assistant Production Office Coordinators and Assistant Production Accountants have traditionally been used the motion picture industry within the meaning of Side Letter Appendix "D" to the 2013 Commercial Production Agreement.
5. For each activity described with respect to request 4 above, please provide the details of how long the practices described have been utilized in the motion picture industry.
6. For each activity described with respect to request 4 above, please provide the details of the productions on which such practices were utilized.
7. For each activity described with respect to request 4 above, please provide the details of any variations of such practices in the motion picture industry.
8. Please identify all witnesses who the IATSE contends would know motion picture industry practice regarding the utilization of Production Office Coordinators, Production Accountants Art Department Coordinators,

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Assistant Production Office Coordinators and Assistant Production Accountants.

For any documents or information that you deem privileged or confidential please prepare and produce a privilege/confidentiality log that lists the type of document/information, form in which the document or information exists, number of pages, date, author or custodian and basis for the claimed privilege or confidentiality. For ease of reference, we recommend that such log be maintained using Bates stamping.

Scott Witlin, Esq. and I are prepared to discuss the production of any document or information that you decline to produce on the basis of a claim of lack of relevance, claims of burdensomeness, privilege, confidentiality or for any other reason. Please provide all responsive information and documents in Bates stamped PDF and hard copy formats. If you cannot complete the delivery of the documents and information requested herein within 30 days from date of this RFI please provide an estimated date of production.

Sincerely,



Robert L. Sacks

RLS (b) (6), (b) (7)(C)  
Enclosures

cc Scott J. Witlin, Esq. (w/encls.)  
(via PDF; [scott.witlin@BTLaw.com](mailto:scott.witlin@BTLaw.com))

(b) (6), (b) (7)(C) (w/o encls.)  
(via PDF; (b) (6), (b) (7)(C) @aicp.com)